



November 29, 1999

Ms. Bonnie Lee Goldstein  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.  
3000 Bank One Center  
1717 Main Street  
Dallas, Texas 75201-4335

OR99-3393

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129782.

The Town of Flower Mound (the "town") received a request for "all files" for the requestor, "including all failures to appear including all warrants and return on warrants." You advise that you have released some of the information subject to the request. You seek to withhold the remaining responsive information under sections 552.103 and 552.108 of the Government Code.

Section 552.103(a) excepts from required public disclosure information

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The information at issue concerns alleged violations by the requestor of municipal code provisions pertaining to livestock. You advise that the information relates to pending prosecutions by the city. Based on your representations, we conclude that, except as noted below, the town may withhold the submitted information under section 552.103.

Absent special circumstances which you have not shown here, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the requestor has seen or had access to the records at issue, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). It appears, for example, that the requestor has had access to the

submitted "Animal Control Written Notices" naming him. Such material may not be withheld under section 552.103.

Similarly, section 552.103 does not authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 (1986). Also, please note that the protection of section 552.103 ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

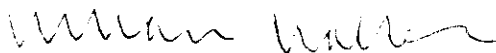
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You contend that section 552.108 "excepts from disclosure any law enforcement record 'that deals with the detection, investigation, or prosecution of crime.'" The provisions of section 552.108(a), however, indicate on their face, that such law enforcement records are protected under the section only if release of the information would "interfere" with law enforcement, if the records deal with a matter which did not result in conviction or deferred adjudication, or if the information was prepared by the prosecutor or reflects his mental impressions or legal reasoning. Internal records are protected under subsection (b) of the section only where similar showings are made. In our opinion, you have not shown that release of the submitted information would interfere with law enforcement or that the information is otherwise protected by section 552.108. For example, although you advise that there are pending cases on these matters, you have not advised, nor is it readily apparent on the face of the records, which portions of the submitted records pertain to pending cases. (Notably, the burden on a governmental body of showing that information is "related" to litigation for purposes of section 552.103 is less than that required for demonstrating the applicability of section 552.108 to information. *See, e.g., University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.)).

Therefore, none of the information may be withheld under section 552.108. Accordingly, you must release any portions of the submitted information which, as discussed above, are not protected by section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 129782

Encl. Submitted documents

cc: Mr. Hollis Godfrey  
401 North Elm Street  
Denton, Texas 76201  
(w/o enclosures)